

LABOR MANAGEMENT RELATIONS QUARTERLY MEETING

FEDERAL CORRECTIONAL COMPLEX

COLEMAN, FLORIDA

JANUARY 20 - JANUARY 21, 1999

PARTICIPANTS:

MANAGEMENT:

Ron Thompson
Joe Chapin
Phillis Morgan
Dan Joslin
George Pruden
Nikki Gallo

UNION:

Phil Glover
Jim Turner
Larry Raney
Dennis Biesik
Manny Borquez
Paul Rissler
Allen Green
Charlie Bohannon
Ben Monagan
Randy Martin

Subject Matter Experts (via teleconference):

Scott Dodrill
Dick Tatton
Kathleen Kenney

POLICIES NEGOTIATED

SEE SEPARATELY ATTACHED POLICY NEGOTIATION NOTES ON:

C.N. 3420.XX:	Standards of Employee Conduct
P.S. 5214.04:	HIV Positive Inmates, Procedures for Handling of
P.S. 1210.08:	Management Control and Program Review

Summary of Issues Addressed During LMR Meeting:

Alternative Dispute Resolution
Case Management Training and Reference Guide
Crisis Management Training Budget
Cross Gender Pat Searches
Fitness Centers
Foot Hazard Areas
Grievance Procedure
GS-8 Posts - FMC Rochester
Health and Safety Issues - MCC Chicago
HIV Positive Inmates, Procedures for Handling of
Lunch Breaks
Management Control and Program Review
Occupational Safety and Environmental Health
Official Time
Per Capita
Promotions/Laterals - FCI Danbury
Radio Systems - MCC San Diego/FCI Phoenix
Regional Vice President's LMR Reports
Staff Correspondence About Inmates
Standards of Employee Conduct
Training Center Use for Local Union - FCI McKean
Vacating of Posts

National Agenda Item: MANAGEMENT

*** Follow-Up Presentation on Alternative Dispute Resolution**

Who: Mina Raskin, OGC

Information about the ADR process and the proposed pilot program was provided to both Management and the Union. Ms. Raskin explained what has transpired since the last meeting and explained the proposed pilot in the Mid-Atlantic region, specifically at Ashland, Lexington, Manchester, Memphis, Milan and Petersburg.

The Union assigned Charlie Bohannon to work with Ms. Raskin on the ADR program. The Union stated that they supported going forward with the ADR pilot as long as it is done in complete cooperation with Joe Henderson, AFGE representative, and Charlie Bohannon, CPL representative.

National Agenda Items: UNION

1. **ISSUE:** “Discussion of per capita changes at medium/high level facilities. The Union would like to discuss the ramifications of these decisions.”

Response: The Union began the discussion by informing Management that they will be submitting a formal bargaining request on this issue sometime in the near future. The Union is concerned that the field might be going beyond per capita “targets”. More specifically, they believe that the Regional Directors are budgeting the local institutions at the per capita rate rather than the normal rate and asking institutions to work toward the per capita rates. They gave the example of FCI Florence in which a memo supposedly went to staff explaining that the target to be reached is almost \$2.00 below the per capita target. The Union believes institutions are trying to go beyond what is necessary to meet the per capita guidelines.

Management stated that during a meeting with the Director, in which both Management and the Union were present, certain

agreements were reached. These were 1) The Director would send out a telemesssage to all CEOs regarding what they should be doing in regard to per capita, 2) involve the Union, and 3) send a memorandum from the Director to all staff explaining the need to make cuts. This memorandum would be reviewed and concurred with by the Union prior to issuance. The Director, per Management, did put out a telemesssage and has involved the Union. Mr. Glover acknowledged that he is part of a workgroup which is addressing this issue. However, Management emphasized that they are waiting for feedback from the Union on the memo. Without that feedback, the memo cannot be sent as agreed upon. In addition, Management urged the Union to send its membership a memo explaining what was discussed during the meeting with the Director and what still remains to be done.

The Union continued to emphasize that they have heard from the field that the per capita projections have already been sent out by the Director and instructions were to meet those projections. Therefore, according to the Union, the memo would serve no purpose. When Management asked the Union what the hesitation was on their part in regard to participating in the preparation of the memo, the Union responded that they did not want their membership to think they agreed that per capita reductions were necessary. In addition, the reference to the staff "becoming the best-value provider" is not accurate to them as they believe that staff are already the best-value providers and it is not something they need to work toward. Management emphasized that the Union can change some of the language in the memo to convey their point of view. The Union agreed with this and agreed to participate in the preparation of the memo.

The Union gave more examples of institutions that have been given per capita plans far below previous operating costs:

- Lewisburg was cutting back by almost \$20 (from \$72.66 to \$56.43),
- Lompoc was cutting back by \$5,
- Terre Haute was cutting back by \$19 (from \$71.48 to \$52.27), and
- the average cutbacks, at other institutions, were \$12 (from \$65.65 to \$53.45).

The Union's ultimate concerns were to find out 1) if Regional Directors were budgeting the institutions at the per capita rates, and 2) how the high level security institutions were going to be able to operate after cutting out the specified amounts above. Management agreed to speak to the Executive Staff about these concerns.

2. **ISSUE:** "Sort Team: Union would like to see the dollar amount that is spent for the past two years in SORT TEAM travel and training and events. This request is in line with discussions on per capita."

Response: Scott Dodrill said that money is given for "Crisis Management Training", which includes such activities as SORT, DCT, HNT, and so on. Each institution that has a SORT team, and there are approximately 52, is given \$10,000 to spend accordingly on those training activities. This money is requested from the Administration Division each year, a year in advance of when it is needed, specifically for training purposes. Management stated that once the institution has the money, they are unaware of exactly how the money is divided among the activities since this is up to each institution. Management suggested to the Union that they contact each region to find out exactly how much money has been given out and where it was spent. In addition, if there is money left over, Management indicated that it cannot be spent on anything other than the training programs for which it was originally allocated. The Union was satisfied with this explanation and will pursue it further with each region.

When asked why they were interested in this issue, the Union stated that they were just wanting to see how much the Bureau spends on various activities in light of per capita reductions.

3. **ISSUE:** "Danbury: Discussion of cross gender pat searches."

Response: At the outset, Management stated that this was a local issue and should not be on a national LMR meeting agenda. The Union indicated that this case could have far reaching implications. The Union explained a specific situation in which a staff member was

disciplined due to pat searching a female inmate who he had been instructed not to pat search (*see Holder v. Harding, D. Conn., No. 398-CV-656, 1998*). The Union's main concern is that due to this particular incident and the resulting court action, male staff will not pat search any female inmates because they do not want to take a chance. In addition, the Union does not believe that a judge should be able to dictate how the Bureau runs its institutions and that this one incident would have nationwide impact because of the judge's ruling.

Management stated that they understood there were specific circumstances revolving around this one incident which made it unique, e.g., the officer had been instructed on three separate occasions not to pat search the inmate and the inmate had unusually long blonde hair which was difficult to mistake. In addition, Management stated that there's an appeal process in place for just this sort of situation and that the Agency will continue to pursue its options. In the meantime, the Agency must comply with the mandated order from the judge; otherwise, the Agency will be in contempt.

4. **ISSUE:** "Health and Safety issues at MCC Chicago:
- There are wooden doors in the housing units which, it is believed, is against life safety codes. [The Union] requests that all wooden doors be removed and replaced with steel doors.
 - In the kitchen area with wooden doors, the Unit offices with wooden doors would start a good fire.
 - Several units have no way to lock down inmates. These are pre-trial offenders, and are mixed by history and classification. [The Union] requests that this be looked at in order to provide a safer environment.
 - Officers' stations are in the middle of the units under a tier. There are no screens above the station to avoid any falling items or items thrown onto the officer.
 - There are no safe harbor areas for officers within the units. One area that may be used as one has no handles on the inside of the doors to pull them shut. If an officer could get away and inside, he could not lock it.
- These are several safety concerns that were addressed with the

Warden during our tour of the institution, which he did seem to have an interest in. It should be noted that this is a high rise and could cause some serious loss of life if inmates decided to start fires within the units.”

Response: The Union stated that the above safety issues could be corrected by using existing materials at the institution or from a nearby institution. In addition, the Union believed that after the 1995 riots, there had been funding allocated for the updating of wooden doors, and the installation of bars, screens and safety glass. The Union asked Management where the money went because it did not appear to go to MCC Chicago’s needed repairs. Management agreed to address these issue with Mr. Graber (Warden designee) and Regional Director Hershberger after the meeting. The Union was satisfied with this.

5. **ISSUE:** “Foot hazard/safety shoe areas in the institutions.”

Response: The Union stated that they believe that since the new contract and per capita targets came out, the foot hazard areas have changed (i.e., they have become fewer in number to reduce the cost of buying safety shoes). Management stated that they understood what the issue was, since this has come up previously at LMR Meetings. However, Management also informed the Union that they are still waiting for the Union to provide the list of institutions where this is allegedly occurring. Once the list is received, the Agency is willing to address the problem. The Union again agreed to provide the list to Management.

6. **ISSUE:** “Fitness Centers: Equipment in some of the fitness centers across the Bureau is not being fixed due to the \$20,000.00 limit per policy and may cause some centers to become unsafe. [The Union] requests this be looked into across the Bureau.”

Response: Mr. Raney indicated that this issue is being taken care of and withdrew it from the agenda.

7. **ISSUE:** “Danbury: Discussion of Management staff at FMC Devens

keeping Danbury staff from lateralizing, promoting there.”

Response: Management stated that this was a local issue, and should not be on a national LMR meeting agenda. The Union responded that staff are not informed of their selection or non-selection for a position. Management asked whether lack of notification was the issue. The Union stated that non-selection of Danbury staff, particularly Correctional Officers, is the issue and that the HRM at Danbury is allegedly saying that since the Union president at Devens came from Danbury, and apparently was causing problems, that Management at Devens should not select any more staff from Danbury. Management indicated that there have actually been 11 selections, three of which were Correctional Officers, from Danbury to Devens. In addition, four additional candidates, all of which are Correctional Officers, are currently being considered. Mr. Biesik stated that the notification to staff is still a problem but that Mr. Rardin is looking into this issue. This was a discussion item only.

8. **ISSUE:** “McKean: Use of training center by the Union Local, and conditions placed on its use.”

Response: Management indicated that this was another local issue which should be resolved at that level. Mr. Biesik then stated that this grew out of a local arbitration where the institution wanted all staff to be included in Union meetings, not just Union members. Management stated that the institution for the most part could not dictate the attendance at Union meetings and the Union concurred. Mr. Biesik informed Management that a policy has been written with specifics about the local Union meetings and thus, the issue is now resolved.

9. **ISSUE:** “Status of new radio systems at MCC San Diego and FCI Phoenix. This was an LMR item some time ago and it was in the procurement stage. The Union requests these systems be expedited.”

Response: Management had spoken to the region before the meeting and

provided more specific information to Mr. Borquez on this issue. In addition, Management stated that unless the Union or someone in the region tells them what is happening in regard to this situation, they won't know since this is a local issue. Mr. Borquez, emphasizing that it had been almost a year since this process was started, asked Management to follow-up and push things along if possible.

10. **ISSUE:** LMR report written by the Western Regional Vice President: "Is this report getting any attention from Management at the Central Office?"

Response: Management stated that these reports get put into the LMR Quarterly Reports which go to all CEOs. As such, it gets a great deal of personal attention from the Wardens. In addition, the Western Regional Director indicated that he gives it his attention. Management went on to state the LMR reports are important tools utilized to pass on information to Wardens and Regional Directors. Management encouraged the Union to continue to submit their reports in the future so they can be incorporated into the LMR Quarterly Reports.

11. **ISSUE:** "Discussion of the grievance procedure. Locals have gone to their Wardens to resolve issues and then filed the grievance with the Regional Director. All grievances are being denied as improperly filed."

Response: This is a recurring issue from previous LMR Quarterly Meetings. Management stated that this is an interpretation issue and won't be resolved in another discussion about it. The Union stated that the Regions are not agreeing to participate in the arbitration process. Management indicated it was their feeling that a Warden's decision to not informally resolve an issue raised at lower levels is not a "decision" as envisioned in the Master Agreement. The Union was in disagreement with this position. Both Management and the Union agreed that this would not be resolved at this meeting.

12. **ISSUE:** “Springfield Mandatory Overtime issue: The Agency at Springfield refuses to negotiate a process for mandatory overtime. Article 18, section p states ‘Specific procedures regarding overtime assignments may be negotiated locally.’”

Response: The Union withdrew this issue from the agenda.

13. **ISSUE:** “Official Time: [The Union] requests a clearer explanation why Management is declaring this non-negotiable during local supplemental agreement bargaining sessions.”

Response: Management emphasized that this process was already decided by the Federal Service Impasses Panel. The term “reasonable” is to be determined on a case-by-case basis. This entire issue is already covered by the Master Agreement, according to Management, and if language is found in local contracts attempting to define ‘reasonable’ or elaborate on this issue, it will most likely be struck. This was a discussion item only.

14. **ISSUE:** “Health and Safety/Vacating of posts and using non-custody personnel to work custody posts to avoid the paying of overtime money: When the Agency takes a person from a job, and assigns him or her to a position he or she does not normally work, it is causing problems for our staff and decreasing security of the institution. It also causes a shortage of staff to respond to calls for assistance by staff. The Agency is not staffing institutions at 100% at the present time and is projecting more cuts in staffing to save money. How does this fit in with ACA standards and the staff-to-inmate ratio announced to the Administration and Congress?”

Response: This is a recurring issue from previous LMR Quarterly Meetings. The Union stated that they have told their locals to pull daily rosters in order to tell about the vacancies to “whoever will listen”. The Union, from this, will try to assess how bad the situation is at certain institutions. This was a discussion item only.

15. **ISSUE:** “Compressed Work Schedules at Springfield: The Agency has declared this to be non-negotiable; this is in direct violation of 5 U.S.C. It is requested that someone at a higher level than the Warden at Springfield become involved and have local Management go to the bargaining table as is appropriate.”

Response: The Union withdrew this issue from the agenda.

16. **ISSUE:** “Creating GS-8 Posts at Rochester: The Warden has decided to create certain posts for GS-8s only and has determined that 35 posts are needed. This does not comply with the Master Agreement. [The Union] requests that this Warden be instructed to follow the agreement.”

Response: Mr. Raney stated that he will be meeting with the Warden at Rochester on this issue. The issue, per the Union, is that at one point there were only a few GS-8 posts, when now there are allegedly 35. The Union asked how a GS-7 officer can qualify to work a GS-8 post if he or she is never given the opportunity to gain the experience. The Union indicated that there is no longer a distinction made between GS-7 and GS-8 posts and they believe that decisions about who gets to work the GS-8 posts are made arbitrarily. This was a discussion item only.

17. **ISSUE:** “One-hour lunch breaks: The MSTC has a grievance filed on the Agency requiring employees to be at the institution or facility for nine hours during scheduled classes. During this time, the Agency is requiring employees to take a one-hour lunch period, Employees are being denied overtime for the second 30 minutes. This is a violation of the Master Agreement, Article 18, section a.”

Response: The Union’s concern is that staff must stay an extra half hour at the training facility (irrespective of the fact that no work is being performed). Management presented the Union with three options on this issue, 1) Continue to arbitration hearing as

scheduled, 2) Drop the grievance, or 3) Change everyone's schedules at the MSTC, and possibly other training facilities. The Union suggested that a cafeteria be utilized to feed employees and staff, similar to the Staff Training Academy in Glynco. The Union indicated that the schedule had been changed from the past and wanted to know why? Management indicated that they were not aware that any scheduling changes had been made. This issue was tabled until further research could be done by the Union and/or it goes to arbitration.

❖ **C. N. 3420.XX: STANDARDS OF EMPLOYEE CONDUCT**

Proposal 1: The following language was proposed and agreed upon by both Management and the Union: “This policy will not override the Master Agreement.” This language is to be added under “Purpose and Scope”, at the end of the first full paragraph, after the last sentence which ends with “...conduct themselves by these standards.”

Proposal 2: The Union proposed that the “reckoning period mean two years from the date of the incident”. Management stated that the language in the policy comes from negotiations that took place with Joe Jarvis, former National President for the Council of Prison Locals. In addition, this language was adopted from the Department’s language. The Union asked for clarification of the term “awareness”. Management stated that, previously, the term “awareness” referred to the date that the discipline was given to the employee. Now it refers to the date that the Warden receives the OIA report, which explains what the conduct was and what was found as a result of the investigation.

The Union went on to express their concern about extended investigations which may go on for a very long time after the offense has occurred. Management stated that the OIA investigation, even after an extended period of time, may clear the person of wrongdoing and, thus, it wouldn’t be right to use that against the person. However, if the person is not convicted, that does not protect the employee from Agency disciplinary action for the underlying misconduct.

After stating that they were not interested in negotiating the reckoning period, the Union asked how an employee is supposed to know when a Warden gets the OIA report. Management responded that the employee can simply ask for the date, to which the Union said that this is not occurring in the field, even upon request. Management ensured the Union that an employee has the right to know what the date of the report is so he or she can estimate what the reckoning period is in his or her case.

Management agreed to put out a memo (or some other form of written notification) to all Wardens specifying that an employee is entitled to know what the date on the OIA report is and that if an employee makes such a request, the Warden is obligated to provide that date. Management said they would provide the Union with a draft of the memo to review first. Management made it very clear that the reckoning period, regardless of what it is, is something that is not negotiable. However, if the sole issue is the employee having the right to know the date the Warden received the report from OIA, the issue is resolved. The Union agreed with this proposal.

Proposal 3: Management stated that “just debts” are defined in the policy exactly as they are defined in the Master Agreement. The Union agreed and withdrew the proposal.

Proposal 4: Since the proposed language had been incorporated in another policy after this proposal was written, the Union withdrew this proposal.

Proposal 5: Management stated that the Table of Offenses and Penalties was non-negotiable per case law but asked to hear the Union’s concerns. The Union’s main concern is progressive discipline, to which Management responded that this is covered in the Master Agreement. The Union went on to state that they do believe progressive discipline is necessary to achieve the desired results with some employees. In addition, they agreed that sometimes the Agency needs to take the most drastic route because of an employee’s conduct. Both Management and the Union agreed that consistency is important if progressive discipline is to work. Management stated that training is provided which targets this issue and similar “pitfalls” that some officials might experience. The Union stated that sometimes Management goes for the maximum penalty when a lesser penalty would probably have the desired corrective effect. This was a discussion item only and the Union withdrew this proposal.

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❖ **P.S. 5214.04: HIV POSITIVE INMATES, PROCEDURES FOR HANDLING OF**

- The Union expressed their concern about the ramifications of staff representing inmates and that they do not believe that the Bureau has the legal right to make a staff member be an inmate's representative.
- Management explained that the policy allows for a staff member to decline for "good reason" so there is no mandate for a particular staff member to represent an inmate if he or she feels that there is a conflict of interest. Management went on to explain that the staff member is not expected to serve as the inmate's attorney, but rather as the "legs" of the inmate. He or she would simply be required to collect witness testimonies, documentation, books, etc.
- Management further stated that this policy has been in 28 CFR, Part 541.60, since 1987 and therefore, there has been no change to the policy. Statistics were presented which showed that only .01% of inmates are known to be HIV positive. During the past year, only five inmates have had to go to a Controlled Housing Status Hearing and none of those were represented by bargaining unit employees.
- The Union expressed further concern about the possibility of an inmate suing a staff member in the event that a staff member does not represent an inmate to the inmate's satisfaction.
- Management stated that there have been no known cases where an inmate, in his or her individual capacity, has successfully sued a staff member. The process to do so is extremely cumbersome for an inmate.
- The Union then asked why, if there are so few cases, can't Management regularly designate non-bargaining unit staff to represent the inmates at these hearings.
- Management stated that if the intention of the Union's proposal was not merely clarification of the law but to negotiate who Management designates as the inmate's representative, then this proposal would be declared non-negotiable. The Union agreed that this was their intention and thus, Management declared the proposal non-negotiable since it was an assignment of work.

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❖ **P.S. 1210.08: MANAGEMENT CONTROL AND PROGRAM REVIEW**

Management explained to the Union that a new draft of this policy was in the works. According to National Policy Review, the policy was going to be back in Mr. Tatton's office approximately the following week for revisions. Subsequently, it will go to the Assistant Director and Director for signature, and then to LMR for forwarding to the Union. The Union agreed that it would be better to wait until the new draft comes out to negotiate this policy. They also wanted it reflected in the minutes that they would want to negotiate the new policy when it comes out.